

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

TINA DESANTIS,	:	
	:	
Plaintiff,	:	C.A. No. 02C-12-029WLW
	:	
v.	:	
	:	
WENDY CHILKOTOWSKY,	:	
DAVID CHILKOTOWSKY and	:	
D.C. WINDOWS AND DOORS,	:	
a foreign business entity,	:	
	:	
Defendants.	:	

Date Submitted: August 18, 2004
Date Decided: November 18, 2004

ORDER

Upon Plaintiff's Motion for Reargument on
Motion to Dismiss. Denied.

Charles E. Whitehurst, Esquire of Whitehurst Curley & Sunshine, P.A., Dover,
Delaware; attorneys for the Plaintiff.

Douglass Lee Mowrey, Esquire of Bouchelle & Palmer, Wilmington, Delaware;
attorneys for the Defendants.

WITHAM, J.

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This 18th day of November, 2004, upon consideration of Plaintiff’ s motion for reargument, it appears to the Court:

1. On July 27, 2004, this Court granted David Chilkotowsky’ s and D.C. Windows and Doors’ (“ Defendants”) motion to dismiss based upon Tina DeSantis’ s (“ Plaintiff”) failure to comply with Superior Court Civil Rule 4. In accordance with Superior Court Civil Rule 4(j), Plaintiff’ s complaint was dismissed because the plaintiff failed to show good cause why the defendants were not served within 120 days after the filing of the complaint.¹ Plaintiff subsequently filed this motion for reargument asserting several contentions. Specifically, Plaintiff contends service upon the defendants was in compliance with Superior Court Civil Rule 4 because Defendants were served within 120 days of the amended complaint which as a matter of law relates back to the original filing. In the alternative, Plaintiff argues noncompliance with the rule was a product of excusable neglect, Defendants had actual notice and were not prejudiced by such excusable neglect, public policy favors deciding cases on their merits, and Plaintiff should not be punished for her counsel’ s actions. For the reasons set forth below, Plaintiff’ s motion for reargument is hereby denied.

2. When a party presents adequate legal grounds substantiating the

¹ Super. Ct. Civ. R. 4(j) (“ *Summons: Time limit for service.* If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court’ s own initiative with notice to such party or upon motion”).

necessity for reargument, Superior Court Civil Rule 59(e) empowers this Court to grant such party's motion for reargument.² However, a party's motion for reargument will only be granted when the party establishes that the Court has misinterpreted legal principles or facts that would have affected the outcome of the underlying decision.³ This rule affords the trial judge an opportunity to correct errors prior to appeal but is not intended to provide a party with an opportunity to raise new arguments.⁴ Accordingly, only arguments raised prior to the motion for reargument will be considered.⁵

3. Plaintiff contends reargument is warranted because good cause has been shown why Defendants were not served within the prescribed time period. However, as this Court stated previously when granting Defendants' motion to dismiss, "Good cause requires a showing of good faith and excusable neglect ..."⁶ Although Plaintiff contends excusable neglect was present, this Court has already addressed and rejected these same arguments during Defendants' motion to dismiss. These arguments do not explain how this court has misapprehended any legal

² Super. Ct. Civ. R. 59(e).

³ *Beatty v. Smedley*, 2003 Del. Super. LEXIS 437, *5.

⁴ *Id.*

⁵ *Plummer v. Sherman*, 2004 Del. Super. LEXIS 7, *4.

⁶ *DeSantis v. Chilkotowsky*, 2004 Del. Super. LEXIS 258, *2 (citing *Larimore v. Stella*, 2003 Del. Super. LEXIS 312, *4).

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principles or facts that would have changed the outcome of this Court’ s previous decision and thus do not provide a meritorious basis warranting reargument.

4. Plaintiff also contends that she should not be punished for the actions of her counsel and public policy favors having cases decided on their merits, especially when the defendants have not been prejudiced. This Court finds Plaintiff’ s arguments to be unpersuasive. The Supreme Court has consistently stated “ each party must be deemed bound by the acts of his lawyer-agent.”⁷ Although this Court may sympathize with a party whose attorney has performed substandard, each party in a proceeding is deemed to have accented to their chosen attorney’ s actions.⁸

This Court agrees with Plaintiff that public policy favors having cases decided on their merits as opposed to legal technicalities and procedural defects. However, this consideration must be balanced against the necessity for compliance with the rules of civil procedure. These rules were enacted not only to eliminate judgments based upon procedural defects but also to secure a just, speedy, and inexpensive determination in every proceeding for both parties.⁹ Accordingly, while this Court will construe the rules of civil procedure liberally so that cases may proceed and

⁷ *Vance v. Irwin*, 619 A.2d 1163, 1165 (Del. 1993) (citing *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 160 (Del. 1970)).

⁸ See *Young v. Reynoso & Lee*, 2001 Del. Super. LEXIS 280, *6.

⁹ See Super. Ct. Civ. R. 1.

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ultimately be decided on their merits, it cannot blindly read such rules in a manner which plainly disregards their express limitations. Although a harsh result, but as explained previously in this Court' s Order granting Defendants' motion to dismiss, Plaintiff has failed to show good cause why service was not made in compliance with the rules. Further, Plaintiff' s argument that her case should not be dismissed because the defendants have not been prejudiced by her noncompliance completely misconstrues the rule. Good cause requires a showing of good faith and excusable neglect. Absent excusable neglect, the prejudice suffered by Defendants is irrelevant.

5. Plaintiff' s final contention is that the service made upon Defendants was actually in compliance with Superior Court Civil Rule 4. Plaintiff argues that Defendants were properly served within 120 days after the complaint was amended. Although Plaintiff cites no cases or rules, Plaintiff argues such service complies with Superior Court Civil Rule 4(j) because the amended complaint relates back to the date of original complaint. This Court finds Plaintiff' s argument unpersuasive. Plaintiff filed her original complaint in December of 2002. Defendants were not served until August 11, 2003, almost 8 full months after the initial complaint was filed. This service failed to comply with Superior Court Civil Rule 4. Although the Defendants did not object when the Plaintiff amended her complaint in April of 2004, Defendants did specifically preserve issues as to service at that time. Thus, Plaintiff' s amended complaint cannot correct defective service in this case where the Defendants specifically preserved issues as to service during the Plaintiff' s

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motion to amend.¹⁰ Accordingly, this Court finds service upon the Defendants was not in compliance the Superior Court Rules.

Based upon the aforementioned reasons, Plaintiff has failed to demonstrate that this Court has misinterpreted any legal principles or facts that might have changed the outcome in its original decision granting Defendants' motion to dismiss. Accordingly, Plaintiff' s Motion for Reargument is hereby *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File

¹⁰ Even if the Defendants did not preserve issues as to service, the amended complaint still would not remedy defective service. The relation back rule generally protects cases not from defective service but rather from their statute of limitations.